

Draft Request for Proposals Question and Response Matrix

The following Matrix includes NHDOT's responses to questions and comments submitted by the shortlisted Proposers regarding the US Route 4 over Bunker Creek Replacement Project RFP received as of 4:00 PM on October 25, 2018.

No.	Doc/Section/Page No.	Question/Comment	Department Response
1	Volume II, Book I, Section 7.2.6	<p>"f. For Major Subcontracts: (i) be terminable by the Subcontractor only for cause; and (ii) include an indemnity from the Subcontractor in favor of Design-Builder and the Indemnified Parties against any and all Losses arising out of, related to, or associated with, the actions, omissions, negligence, willful misconduct, or breach of Governmental Approvals, Governmental Rules, or contract by the Subcontractor or any of its officers, employees, agents, or representatives."</p> <p>We understand that NHDOT does not want a negligence based indemnity as it pertains to compliance with federal laws (in particular FHWA-1273), state and local laws, and breach of the contractual terms. However, we want to ensure that the professional liability insurance NHDOT requests will be responsive. Professional liability insurance carriers cover claims arising from the performance of professional services which are proportionately tied to negligent acts.</p> <p>Would NHDOT be amenable to a split indemnity requirement for claims arising from the performance of professional services, which would include a negligence and proportionality requirement?</p>	The Department will stay with its current indemnity requirement, no changes will be made.

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2	Volume II, Book I, Section 11.1.1	<p>The general warranty contained in this Section 11 is in addition to any express warranties provided for elsewhere in the Contract Documents. Design-Builder warrants that (a) all design Work furnished pursuant to the Contract Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State; (b) the Project shall be free of defects, except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents; (c) materials and equipment furnished under the Contract Documents shall be of good quality and when installed, shall be new; (d) equipment provided by Design-Builder shall be of modern design and in good working condition; (e) the Work shall meet all of the requirements of the Contract Documents; (f) the specifications and/or drawings selected or prepared for use during construction are appropriate for their intended use; and (g) the Project shall be designed and constructed so that it can be used for the intended function.</p> <p>As design professionals we want to ensure that our professional liability insurance will be responsive in the event of a claim, we request that the agreement for the project to be “free of defects” be tied to the standard of care as agreed upon in subsection (a).</p> <p>Would NHDOT be amenable to inserting “...in accordance with the standard of care as described in subsection (a) of this clause...”?</p>	<p>The intent of the following underlined language from subsection (b) is to reference to the standards of work specified in the Contract Documents which in turn references subsection (a) as well as on other referenced standards. “...(a) the Project shall be free of defects, <u>except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents</u>”</p> <p>This language will remain unchanged.</p>
3	Volume II, Book I, Section 9	<p>The section indicates a \$1,000,000 per occurrence/ \$5,000,000 aggregate General Liability Policy and a \$1,000,000 per occurrence/\$2,000,000 aggregate Umbrella policy. The typical industry policies are \$1,000,000 per occurrence/\$2,000,000 aggregate for General Liability and \$1,000,000 per occurrence/\$5,000,000 aggregate for Umbrella.</p> <p>Please confirm the RFP requirements for insurance under the proposed contract.</p>	<p>The General Liability Policy will be changed to \$1,000,000 per occurrence/ \$2,000,000 aggregate. This change will be reflected in Addendum #3.</p>

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4	Vol II Book I, 8.1.6	<p>This section requires a warranty bond in the amount of 10% of the contract amount. Vol II Book 1, 11.8 requires a letter of credit or a warranty bond in the amount of \$5,000.</p> <p>These 2 provisions appear to be in conflict.</p>	Section 11.8 shall be adjusted to agree with the Section 8.1.6 amount of 10% of the Contract Price. This will be reflected in Addendum #3.
5	Volume I. Section 4.3.1	We have not been able to locate (Form O) in any of the documents. Will you please clarify the location of Form O? Or will you be providing us with Form O?	Form O will be added in Addendum #3, please see the response to question #11 of "Addendum 2 Questions and Responses" on the project webpage.